

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Plaintiff,

vs.

TOWN OF NORTH BROOKFIELD,

Defendant.

Civil Action No. 03-40266-CBS

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON
LIQUIDATED DAMAGES AS THE EXCLUSIVE REMEDY FOR DELAY

Plaintiff and defendant-in-counterclaim American Manufacturers Mutual Insurance Company ("AMMIC") moves for partial summary judgment, under Fed. R. Civ. P. 56, on the issue of whether the damages for delay to which defendant and plaintiff-in-counterclaim Town of North Brookfield (the "Town") was entitled are limited to liquidated damages under the Contract. If so, the Town's attempt to recover other delay damages must be denied. The Court should rule that the Town cannot recover (1) architect and construction management fees and expenses incurred as a result of the work required under the contract extending after the time for Sciaba's performance (whenever the Court determines that to be), \$517,679.03, or (2) the cost of repairing a roof on the old junior-senior high school building, claimed in the amount of \$6,336.50. Based on facts as to which there is no genuine dispute, AMMIC is entitled to partial summary judgment as a matter of law on this issue. In further support of this Motion, AMMIC has filed the Plaintiff's Statement of Undisputed Facts ("Facts"), the Affidavit of Deborah S. Griffin ("Griffin Aff."), and a Memorandum.

REQUEST FOR HEARING

AMMIC requests a hearing on this Motion.

CERTIFICATION UNDER LOCAL RULE 7.1

The undersigned hereby certifies that counsel have conferred and have attempted in good faith to resolve or narrow the issue presented by this motion.

**AMERICAN MANUFACTURERS
MUTUAL INSURANCE COMPANY**

By its attorneys,

HOLLAND & KNIGHT LLP

/s/ Deborah S. Griffin

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Dated: December 16, 2005

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